

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation and Economic Development Appropriations Committee

BILL: CS/SB 1682

INTRODUCER: Ethics and Elections Committee and Senator Dean

SUBJECT: Elections

DATE: April 21, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubinas	Rubinas	EE	<b>Fav/CS</b>
2.	_____	_____	GO	_____
3.	_____	_____	TA	_____
4.	_____	_____	GPSC	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

Committee Substitute for Senate Bill 1682 is an elections measure that contains various changes to the election code, which implement the Military and Overseas Voter Empowerment Act recently signed into federal law. Some of the major provisions include:

- Revising the definition of “overseas voter” and defining “absent uniformed services voter.”
- Revising the absentee ballot process for overseas voters and absent uniformed services voters in accordance with the Military and Overseas Voter Empowerment Act.

The bill takes effect upon becoming a law.

This bill substantially amends the following sections of the Florida Statutes: 97.021, 98.0981, 101.62, 101.694, 101.6952, and 379.352.

## II. Present Situation:

### Definition of Overseas Voter

Currently, an overseas voter is defined as:

- anyone who is an active service member of the uniformed services and a permanent resident of Florida temporarily residing outside the United States; or
- a United States citizen or merchant marine who is a permanent resident of Florida temporarily residing outside the United States.<sup>1</sup>

### Absentee Ballots

Currently, a request for an absentee ballot is automatically good for all elections occurring during the next two generally scheduled election cycles unless the voter specifically designates the elections for which he or she would like to receive an absentee ballot. The automatic request is cancelled when first-class mail is sent to the voter and returned to the supervisor as undeliverable.<sup>2</sup>

The deadline for mailing absentee ballots to overseas voters is 35 days before the primary and 45 days before the general election.<sup>3</sup> If the Elections Canvassing Commission is unable to certify the results of an election for state office in time for supervisors to mail absentee ballots within these time frames, the department has rule making authority to provide for a ballot to be sent to absent overseas voters.<sup>4</sup>

### Military and Overseas Voter Empowerment Act

The Military and Overseas Voter Empowerment (MOVE) Act was signed into law on October 28, 2009, as part of the National Defense Authorization Act for Fiscal Year 2010.<sup>5</sup> The Act made sweeping changes to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).<sup>6</sup> A few of the more significant changes affecting states are listed below:

- MOVE requires absent uniformed service voters and overseas voters to be able to request electronically voter registration applications, absentee ballot applications, and blank absentee ballots for all federal elections, including primary and special elections.
- MOVE requires states to allow these voters to individually designate his or her preference for receiving an application and ballot, either by mail or electronically and requires states to send the requested application and blank ballot by the method designated. If a voter does not designate a preference, a state must transfer the requested information by a delivery method allowed by state law.
- MOVE provides that if a request for a ballot is received 45 days before an election, the ballot must be transmitted to the voter 45 days before an election. If a request is received less than 45 days before an election, the ballot must be transmitted as set forth in state law, but in a manner that expedites the transmission process.

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<sup>1</sup> § 97.011(22), F.S.

<sup>2</sup> § 101.62(1), F.S.

<sup>3</sup> § 101.62(4)(a), F.S.

<sup>4</sup> § 101.62(5), F.S.

<sup>5</sup> Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, 2009.

<sup>6</sup> Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99-410, 42 U.S.C. § 1973 (2008).

- MOVE requires states to develop a free access system which would allow an absent uniformed services voter or overseas voter to determine whether his or her ballot has been received by the appropriate State election official.
- MOVE repeals the requirement applicable to absent uniformed services voters and overseas voters of “one absentee ballot application is good for all federal elections through the next two regularly scheduled general elections for federal office.” This repealed requirement is currently found in s. 101.694, F.S.<sup>7</sup>

### III. Effect of Proposed Changes:

The following is a section by section analysis of CS for SB 1682:

**Section 1** defines absent uniformed services voter and overseas voter. An absent uniformed services voter is a uniformed service member or his or her spouse, who by reason of active duty, is absent from the place where he or she is qualified to vote. This definition also includes a Merchant Marine or his or her spouse, who, because of service in the Merchant Marine, is absent from the place where he or she is qualified to vote.

An overseas voter is defined as either an absent uniformed service voter who is absent on election day from the U.S. because of active duty or a person residing outside the U.S. who is qualified to vote or who would be qualified to vote, but for such residence, in the last place the person lived before leaving the U.S.

**Section 2** conforms a cross-reference.

**Section 3** makes changes to the absentee ballot process for overseas voters and absent uniformed services voters. These changes are in response to the Military and Overseas Voter Empowerment Act (MOVE Act) recently passed by Congress and signed into law by the President of the United States as part of the National Defense Authorization Act for Fiscal Year 2010. The changes include:

- Requiring a supervisor, upon receipt of a request for an absentee ballot from an overseas voter or an absent uniformed services voter, to notify the voter of the free access system available to the voter so he or she can determine the status of his or her absentee ballot.
- Requiring supervisors to send an absentee ballot 45 days before *each election* to each absent uniformed services voter and overseas voter who has requested such ballot. The ballot must be sent by forwardable mail, e-mail, or fax machine transmission. The absent uniformed services voter or overseas voter may designate a preferred method of transmission; however, if no designation is made, the ballot will be mailed.
- Revising language with regard to the Election Canvassing Commission certifying the results of the election. Currently, if the ECC is unable to certify the election in time for supervisors to meet the ballot deadline of 45 days prior to an election, the Department has rule making authority to provide a ballot to send to absent uniformed services voters and overseas voters. The proposed language removes the ECC from this specific provision by providing that if the *Department* is unable to *certify candidates* for an election to meet the 45-day deadline for

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<sup>7</sup> See *infra*, note 6.

ballots, then the Department has rule making authority to provide a ballot to send to absent uniformed services voters and overseas voters.

**Section 4** removes the “one absentee ballot request is sufficient for all elections through the next two regularly scheduled general elections” requirement for persons using the federal postcard application to request an absentee ballot, since the federal MOVE Act repealed this requirement from federal law. However, section 101.62(1), F.S., still provides that one absentee ballot request “shall be deemed sufficient to receive an absentee ballot request for all elections through the next two regularly scheduled general elections.”

**Section 5** requires that if an absentee ballot request from an overseas voter or an absent uniformed services voter includes an e-mail address, the supervisor must: record that e-mail address in the voter’s ballot record, confirm via e-mail that the request was received along with an estimated date that the ballot will be sent to the voter, and notify the voter via e-mail when the voted ballot is received by the supervisor. This section takes effect on July 1, 2010.

**Section 6** conforms a cross-reference.

**Section 7** provides that CS for SB 1682 takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of State has allocated up to \$525,000 from current year federal (Help America Vote Act grant) funds to be distributed to the counties to implement the MOVE

Act provisions, specifically the free access system for absentee ballot tracking. These funds are distributed to local governments.

Local Government Impact:

**Absentee Ballots**

Because many people move their residences without notifying the supervisor of elections, the decrease on the number of years for absentee ballot requests from 2 to 1 year may cause less returned mail, thereby decreasing postage costs.

The supervisors of elections will incur some costs relating to notifying voters of the free access system. Costs will vary depending on whether the county has a web-based request system that could display the information to the voter or whether the county must use a different means of notifying the voter. The Department of State is providing up to \$525,000 from current year HAVA funds to be distributed to the counties to implement this provision.

Some minimal additional costs may be incurred by the supervisor of elections notifying overseas voters and absent uniformed services voters by e-mail of the status of their absentee ballots. This will depend on the number of these voters and whether the county sets up an automatic e-mail response.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Ethics and Elections Committee on April 20, 2010:**

Committee Substitute for Senate Bill 1682 defines “absent uniformed services voter” and redefines “overseas voter.” The bill makes changes to the absentee ballot process for overseas voters and absent uniformed services voters by:

- Requiring a supervisor, upon receipt of a request for an absentee ballot from an overseas voter or an absent uniformed services voter, to notify the voter of the free access system available to the voter so he or she can determine the status of his or her absentee ballot.
- Requiring supervisors to send an absentee ballot 45 days before *each election* to each absent uniformed services voter and overseas voter who has requested such ballot. The ballot must be sent by forwardable mail, e-mail, or fax machine transmission. The absent uniformed services voter or overseas voter may designate a preferred method of transmission; however, if no designation is made, the ballot will be mailed.

- Revising language with regard to the Election Canvassing Commission certifying the results of the election. Currently, if the ECC is unable to certify the election in time for supervisors to meet the ballot deadline of 45 days prior to an election, the Department has rule making authority to provide a ballot to send to absent uniformed services voters and overseas voters. The proposed language removes the ECC from this specific provision by providing that if the *Department* is unable to *certify candidates* for an election to meet the 45-day deadline for ballots, then the Department has rule making authority to provide a ballot to send to absent uniformed services voters and overseas voters.

The bill removes the “one absentee ballot request is sufficient for all elections through the next two regularly scheduled general elections” requirement for persons using the federal postcard application to request an absentee ballot, since the federal MOVE Act repealed this requirement from federal law.

Effective on July 1, 2010, the bill requires that if an absentee ballot request from an overseas voter or an absent uniformed services voter includes an e-mail address, the supervisor must: record that e-mail address in the voter’s ballot record, confirm via e-mail that the request was received along with an estimated date that the ballot will be sent to the voter, and notify the voter via e-mail when the voted ballot is received by the supervisor.

Committee Substitute for Senate Bill 1682 takes effect upon becoming a law.

**B. Amendments:**

None.